



N A R U C
National Association of Regulatory Utility Commissioners

William M. Nugent, *President*
Maine Public Utilities Commission
David A. Svanda, *First Vice President*
Michigan Public Service Commission
Stan Wise, *Second Vice President*
Georgia Public Service Commission

Constance B. White, *Treasurer*
Utah Public Service Commission
Charles D. Gray, *Executive Director*
Washington, DC Office

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October 3, 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Notice of Written Ex Parte Comments – Two Originals filed in the proceeding captioned: *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).

Madam Secretary:

The National Association of Regulatory Utility Commissioners sent the attached letter by regular mail to the office of each FCC Commissioner. In addition, I e-mailed copies to Christopher Libertelli, Matthew Brill, Sam Feder, Jordan Goldstein, and William Maher.

If you have questions about this filing, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 27, 2002

William M. Nugent, *President*
Maine Public Utilities Commission
David A. Svanda, *First Vice President*
Michigan Public Service Commission
Stan Wise, *Second Vice President*
Georgia Public Service Commission



Dear Minority Leader Lott:

The Honorable Trent Lott
Senate Minority Leader
United States Senate
487 Russell Senate Office Building
Washington, D.C. 20510

We are writing to respond to the latest Regional Bell Operating Company (RBOC) campaign on Capitol Hill urging the FCC to restrict the tools used by State Commissions to promote local telephone competition, especially the use of the Unbundled Network Element Platform (UNE-P). UNE-P is a competitive entry model flowing from the 1996 Telecommunications Act, which allows competitors to lease part of the incumbent carrier's network. These lobbying efforts resulted in a letter sent by a group of House members to FCC Chairman Powell on September 16th. The letter contains factual inaccuracies that require a response.

State commissions remain focused on the difficult tasks of promoting facilities-based competition as envisioned by the 1996 Telecommunications Act and assuring customers receive better services and more choices at lower prices. We cannot accomplish that important economic policy goal without the availability of effective competitive entry strategies such as UNE-P. Currently, NARUC is collecting data from its members on the significant impact of UNE-P in fostering local competition.

The 1996 Act directs State commissions to determine the terms for access to the network, including the wholesale price that competitive carriers pay the incumbents for access to various network elements, e.g., UNE-P. All State commission decisions concerning wholesale network pricing are based on an evidentiary record that is developed through public hearings. These pricing decisions are also appealable.

The RBOC concern over lost revenues as a result of UNE-P and other entry strategies has also been thoroughly examined in State commission proceedings including those concerning Section 271 entry into long distance. Based on the record of evidence presented in those proceedings, States have concluded that the price points set for wholesale access to unbundled network elements must be based on economic costs based on the incumbent carriers' own cost studies.

We believe that the loss of market share among monopoly providers is an expected outcome when successful competitive public policies are being implemented in the marketplace. It does not mean that the current UNE-P pricing methodology is necessarily flawed, nor does it mean that the methodology is "improperly applied" at the State level as some critics claim.

It should be noted here that several RBOCs *voluntarily* reduced their UNE-P prices in many States during the course of the 271 review process.

Indeed, if there is any truth to the claims of inappropriate State pricing, there is an easy remedy for their claims – the Courts. The United States Constitution prohibits any regulator from setting prices for use of the RBOCs' physical plant without providing a fair opportunity for an adequate return on investments. Recently, the U.S. Supreme Court in *Verizon Communications Inc. vs. FCC* addressed the RBOC's complaints about UNE prices in relation to their infrastructure investment and concluded that the current pricing methodology, which reflects forward looking economic costs and allows the opportunity for a reasonable return on their investment, is sound.

Despite the Supreme Court's finding that the current pricing rules provide the RBOCs with an opportunity to earn a reasonable profit on their investments, they continue to argue on the Hill and at the FCC that wholesale prices for UNEs are confiscatory, below cost, and illegal. Given the trends in RBOC returns since the 1996 Act and the onset of UNE-P, this argument is hard to comprehend. According to data filed at the FCC, since 1996, RBOC interstate rates of return have risen roughly from 14% to 20% as of year-end 2001.¹ Total company returns seem to have followed the interstate trend.² To the extent returns are down for 2002, it may be attributable to the collapse of the capital markets, poor investment strategies, and perhaps some small and expected competitive inroads by competitors into the RBOC markets. The facts are clear: the assertion that State UNE prices are forcing RBOCs into bankruptcy is nothing more than unsubstantiated speculation.

In addition, the reduction in RBOC capital spending has no relationship to UNE pricing. As stated earlier, the pricing methodology is based on economic costs and thus does not require the RBOC to cut back on its capital expenditures. The decision to reduce capital spending may have more to do with choice and the company's own business strategy.

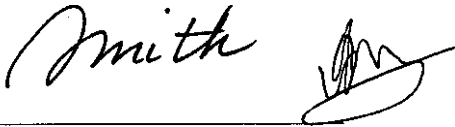
Of course, the emerging presence of competition forces monopolies to cut costs and offer better service – a reality that competitive industries face every day. Instead of simply complying with the Court's mandate and current law, the RBOCs continue to lobby Congress and the FCC for special protection from the rules. We do not believe such efforts will, in the end, benefit customers or stimulate economic growth in the telecommunications sector.

For your review, we have attached several resolutions on these issues that were discussed at length before the entire NARUC membership. Thank you for your attention to our concerns. Please do not hesitate to contact any one of us for additional information on this or any other telecommunications issue.

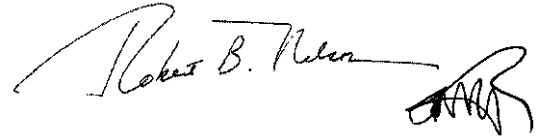
¹ See, the FCC's website at <http://gulfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms>, where the FCC finds RBOC Holding Company Interstate Rates of Return (in current corporate structures) rising from 14.43% (BellSouth), 13.96% (Qwest), 15.71% (SBC), and 14.50% (Verizon) in 1996 to 19.41% (BellSouth), 22.13% (Qwest), 22.36% (SBC), and 17.18% (Verizon) at year end 2001.

² See, September 10, 2002 Testimony of Dr. Lee Selwyn, tiled before the Pennsylvania Legislature indicating that Verizon Pennsylvania's total company return between 1996 and 2001 has been between 31.03% and 22.01%

Sincerely,

Handwritten signature of Joan Smith in cursive script.

Commissioner Joan Smith
Chair, NARUC
Telecommunications Committee

Handwritten signature of Robert B. Nelson in cursive script.

Commissioner Robert Nelson
Co-Vice Chair, NARUC
Telecommunications
Committee

Enclosures: NARUC Resolutions supporting UNE-P.

Cc: FCC Chairman Powell
Commissioner Martin
Commissioner Abemathy
Commissioner Copps